

Internal Revenue Service

Department of the Treasury

District
Director

Date: MAY 04 1994

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted discloses that you were organized [REDACTED], and on [REDACTED], your purposes were amended to meet the organizational test of Internal Revenue Code (IRC) section 501(c)(3).

Your activities, as described in your application, are monthly meetings, workshops, seminars, an annual picnic, two annual bazaars, an "[REDACTED]" Show, and a bookstore. Your spring bazaar is a "closed show," with member vendors only. The fall bazaar allows rental of vendor space to limited-members and non-members, as well as the regular membership. For vendor participants there is a table rental fee and a [REDACTED] percent commission paid to [REDACTED]. Book sales take place at the bazaars. The public is admitted free of charge. You sponsor an annual "[REDACTED]" juried fashion show and sale. The show features jewelry by your members with creations by fashion artists; worn by paid models. The public is charged admission. "[REDACTED]" program information directed to accepted artists, states that "due to seating limitations, tickets sales for this show will be targeted at people who might buy your work." You mounted an exhibit featuring beads of historical periods and geographical areas, and the variety of materials from which beads are made. The exhibit was displayed at an event conducted by another organization.

An analysis of your income statement for [REDACTED] shows that [REDACTED] percent of your receipts in that year were derived from the Fall and Spring Bazaars, "[REDACTED]" fashion show, and Bookstore sales. Your letter dated [REDACTED], states, "At a recent Board meeting it was voted unanimously that the [REDACTED] cannot continue to exist without holding these two Bazaar fund raisers per year."

In [REDACTED], you contributed \$[REDACTED] to charity. This amount was [REDACTED] percent of your total receipts.

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable...or educational purposes...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization -

- (A) Limit the purposes of such organization to one or more exempt purposes; and
- (B) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(d)(1)(i) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Revenue Ruling 67-178, 1966-1 C.B. 166, describes a nonprofit organization created to foster and develop the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are selected by a panel of qualified judges for viewing and are gratuitously displayed is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Revenue Ruling 71-395, 1971-1 CB 114, describes a cooperative art gallery formed and operated by a group of artists to exhibit and sell their works. The gallery showed and sold the works of its members and retained a commission on each sale. The ruling concluded that the gallery was a vehicle for advancing the interests and promoting the sales of its members, and therefore was not exempt.

Revenue Ruling 79-121, 1979-1 CB 112, held that a nonprofit organization of artists promoting community understanding of modern art by selecting, exhibiting, and selling art works of an artist was not exempt. The reason for denying exemption was that the primary activity of the organization served the private interest of the artists.

In *Better Business Bureau of Washington, Inc. v. United States*, 391 U.S. 279 (1968), the Court held that a better business bureau was not exclusively educational or charitable. Its activities were in part aimed at promoting the prosperity and standing of the business community, even though there was also benefit to the public. The Court states that in order to fall within the claimed exemption an organization must be devoted to exempt purposes.

The presence of a single nonexempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes. According to Revenue Ruling 74-533, 1974-2 C.B. 168, this rationale applies equally well to any category of charitable purposes under section 501(c)(3) of the Code.

Revenue Ruling 64-182, 1964-1 C.B. 186, holds that an organization which derives all of its income from a commercial enterprise is nevertheless entitled to exemption under section 501(c)(3) of the Code where it is shown to be carrying on, through contributions and grants to other charitable organizations, a charitable program commensurate in scope with its financial resources.

Based on the information submitted, we have concluded that you are not organized and operated exclusively for one or more purposes specified in section 501(c)(3) of the Code.

Although you conduct educational activities, your primary activity is the sale of beads and jewelry by your members at the Fall Bazaar, Spring Bazaar, and [REDACTED] show. Like the organization in Revenue Ruling 71-365, your bazaar and shows are a vehicle for promoting the sales of your members.

In keeping with the 64-182, your major activities serve the private interest of your members.

Your members do not merely display or exhibit their works or collections for the education of the public as in Revenue Ruling 68-175.

Unlike the organization in Revenue Ruling 64-182, you do not carry out a charitable program through contributions and grants which are commensurate in scope with your financial resources.

Accordingly, you are not entitled to exemption from Federal income tax under section 501(c)(3) of the Code and are required to file income tax returns on Form 1120. Contributions to you are not deductible by donors under section 170 of the Code.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly set forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 582 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, that proposed determination will become final.

If you do not protest that proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 4612(a) of the Internal Revenue Code provides, in part, that: "A declaratory judgment or decree under this section shall not be entered in any proceeding, unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6013 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]

District Director

Enclosures:
Form 6013
Form 6013